

EXHIBIT 5

From: Robert K. Jain <rjain@hopkinscarley.com>
Sent: Friday, August 27, 2021 12:23 PM
To: Gilly, Richard P.; Franchetti, Nicholas T.; Cooney, Trevor J.
Cc: Jeffrey M. Ratinoff; Mark Halderman
Subject: RE: Proposed Global Meet and Confer - Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

Richard,

Thank you for finally responding to our three-week old request to meet and confer. You provided very specific times, none of which we are available. If you have some other availability between 9:00 am PDT and 11:30 pm PDT on September 1st please let us know.

Thank you,

Robert K. Jain
Associate

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From: Gilly, Richard P. <rgilly@archerlaw.com>
Sent: Thursday, August 26, 2021 12:57 PM
To: Robert K. Jain <rjain@hopkinscarley.com>; Franchetti, Nicholas T. <nfranchetti@archerlaw.com>; Cooney, Trevor J. <tcooney@archerlaw.com>
Cc: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>; mhalderman@atlip.com
Subject: Proposed Global Meet and Confer - Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

Plaintiffs' Counsel,

We are available for the global meet and confer you suggested below, at 3 pm Eastern on either August 30, 31 or Sept 1. Please advise.

Richard P. Gilly, Esq.

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From: Robert K. Jain <rjain@hopkinscarley.com>

Sent: Thursday, August 19, 2021 12:10 PM

To: Gilly, Richard P. <rgilly@archerlaw.com>; Franchetti, Nicholas T. <nfranchetti@archerlaw.com>; Cooney, Trevor J. <tcooney@archerlaw.com>

Cc: Jeffrey M. Ratnoff <jratnoff@hopkinscarley.com>; mhalderman@atlip.com

Subject: [EXT MAIL] RE: Response to your Email of Aug 13, 2021: Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

Richard,

Do Defendants intend to continue the assertion of their prior derivation defense, yes or no? Your contentions do not answer this very simple question, and thus we ask that it be clearly answered.

Additionally, we believe a global meet and confer over the parties' respective contentions would make the most sense. We note that Defendants' preliminary invalidity contentions failed include technical documents sufficient to show the operation of the accused products. We understand that such documents, including CAD files for both the prototype for the ITFD trigger that existed in 2019 and the later production versions exist. Yet, Defendants inexplicable failed to produce such documents. Also, I would remind you that per the Court's Order Governing Proceedings the parties are to first meet and confer, and then raise any unresolved issues via a conference with the Court before rushing to file a motion to compel.

Last, please provide us with a copy of Mr. Gallagher's email correspondence to the Court as referenced in the Court's August 13, 2021 notice. Such ex parte communications are not privileged and Plaintiffs should have received a copy pursuant to the Court's Standing Order re Policies and Procedures for Counsel.

Regards,

Robert K. Jain

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From: Gilly, Richard P. <rgilly@archerlaw.com>

Sent: Thursday, August 19, 2021 4:34 AM

To: Robert K. Jain <rjain@hopkinscarley.com>; Franchetti, Nicholas T. <nfranchetti@archerlaw.com>; Cooney, Trevor J. <tcooney@archerlaw.com>

Cc: Jeffrey M. Ratnoff <jratnoff@hopkinscarley.com>; mhalderman@atlip.com

Subject: RE: Response to your Email of Aug 13, 2021: Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

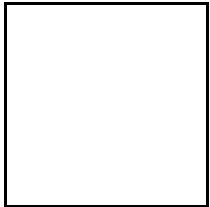
Dear Plaintiffs' counsel,

To the extent Plaintiffs' long and convoluted email below sets out statements, characterizations, or stipulations as to any facts or circumstances, or seeks to bind, obligate or otherwise constrain Defendants as to any position or cause of action, the foregoing are denied and rejected. Defendants' Preliminary Invalidity Contentions as filed speak for themselves.

Without waiver, we shall advise you of a mutually convenient meet and confer date as to the inadequacies of your Preliminary Infringement Contentions in advance of the filing of any Motion regarding same.

Richard P. Gilly, Esq.

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From: Robert K. Jain <rjain@hopkinscarley.com>

Sent: Wednesday, August 18, 2021 4:27 PM

To: Gilly, Richard P. <rgilly@archerlaw.com>; Franchetti, Nicholas T. <nfranchetti@archerlaw.com>; Cooney, Trevor J. <tcooney@archerlaw.com>

Cc: Jeffrey M. Ratino <jratino@hopkinscarley.com>; mhalderman@atlip.com

Subject: [EXT MAIL] RE: Response to your Email of Aug 13, 2021: Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

Dear Counsel,

Thank you for clarifying Defendants' invalidity position. Based on your representation that "Defendants are not making prior-art based invalidity contentions . . . in this litigation at this time," it is our understanding that Defendants will not further pursue any § 102 or § 103 invalidity theories that rely on any prior art referenced in Defendants' Amended Answer and Counterclaims, including U.S. Patent Nos. 8,667,881 ("Hawbaker"), 9,719,744 ("Horch"), and 2,027,950 ("Young"), and/or Defendants' prior conception claims. Please notify us immediately if we have misunderstood Defendants' position in any respect so that these positions can be clarified before the parties' exchange of proposed claim terms.

Assuming our understanding is correct, we believe a joint stipulation removing these counterclaims and defenses from the case is appropriate at this time in order to narrow the issues before the Court and promote judicial economy. To the extent Defendants are unwilling to enter such a stipulation, we trust that Defendants will comply with their continuing obligations under Rule 11 to not litigate these invalidity theories previously alleged in their Amended Answer and Counterclaim as such an attempt would be unmeritorious or frivolous in view of their more recent invalidity

position. See Fed.R.Civ.P. 11(b), Notes of the Advisory Committee on Rules, 1993 Amendments (“a litigant's obligations with respect to the contents of [papers filed with the court] are not measured solely as of the time they are filed with or submitted to the court, but include reaffirming to the court and advocating positions contained in those pleadings and motions after learning that they have ceased to have any merit”); see also *Hanoverian Inc. v. Pa. Dept. of Env'tl Prot.*, Civ. A. No. 07-658, 2008 WL 906545 (M.D.Pa. March 31, 2008) (sanctioning a party for continuing to advocate claims full of gross misrepresentations of the law after learning of these numerous deficiencies). Any attempt to reassert a claim or defense based upon Defendants’ alleged prior conception also would violate the Court’s express instruction during the June 17, 2021 pre-trial conference directing Defendants to produce all evidence substantiating such positions prior to claim construction. See Dkt. 36, p. 18, lines 1-13 (“[The Court:] . . . with the invalidity contentions, defendant is going to come through with the prior art including the 2011 development through 2015 of his own client on accused product.”).

With regard to Defendants’ request to meet and confer concerning Plaintiffs’ Preliminary Infringement Contentions, we are available on Friday, August 20, 2021 between 10:30 am – 1:30 pm PT (1:30 pm – 4:30 pm ET) and on Monday, August 24, 2021 between 9 am – 12 pm PT (12 pm – 3 pm ET). Please let us know which of these times you are available to meet. In the interest of having a productive meet and confer, please identify what information Defendants’ believe is missing from Plaintiffs’ contentions before our meeting.

Regards,

Robert K. Jain
Associate

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From: Gilly, Richard P. <rgilly@archerlaw.com>

Sent: Monday, August 16, 2021 12:35 PM

To: Robert K. Jain <rjain@hopkinscarley.com>; Jeffrey M. Ratnoff <jratnoff@hopkinscarley.com>;
mhalderman@atllp.com

Cc: Cooney, Trevor J. <tcooney@archerlaw.com>; Franchetti, Nicholas T. <nfranchetti@archerlaw.com>

Subject: Response to your Email of Aug 13, 2021: Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

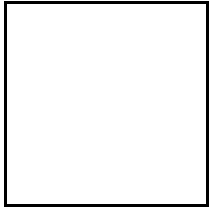
Plaintiffs’ Counsel:

Our Preliminary Invalidity Contentions are self-explanatory, namely, that Defendants are not making prior-art based invalidity contentions, such as based on Hawbaker and Horch, in this litigation at this time. Accordingly, no prior-art claim charts are required, and our document complies with the Order. That fact, however, does not necessitate joint stipulations at this time in this case, especially in view of ongoing discovery of additional facts and circumstances which may lead to invalidating prior art under 35 USC section 102 or 103, such as Plaintiffs’ sales of the same or similar triggers prior to the critical date of the '461 Patent. Furthermore, the meet and confer process is intended in advance of a party’s filing a particular motion to discuss potentially avoiding same. You have not identified any particular motion to discuss.

On the other hand, Plaintiffs' preliminary infringement contentions are incomplete as to the claims allegedly infringed, and your contentions are non-responsive as to the requirement of providing "all documents" evidencing conception and reduction to practice of the "invention." Accordingly, please advise as to your availability to meet and confer to discuss your intention to provide us the missing information, in order to avoid our filing of a motion to compel production of the missing information required by the Court's Order.

Richard P. Gilly, Esq.

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From: Robert K. Jain <rjain@hopkinscarley.com>

Sent: Friday, August 13, 2021 3:06 PM

To: Gilly, Richard P. <rgilly@archerlaw.com>; Cooney, Trevor J. <tcooney@archerlaw.com>; Franchetti, Nicholas T. <nfranchetti@archerlaw.com>

Cc: mhalderman@atllp.com; Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>

Subject: [EXT MAIL] RE: Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

Counsel,

We understand from the Court's notice filed this afternoon that you intend to withdraw from your representation of Defendants Mr. Gallagher and In The Field Defense. Until your withdrawal is approved, we expect that you will continue to comply with the scheduling order per the Court's instruction.

To that end, it is essential that the parties meet and confer concerning Plaintiffs' August 6 correspondence regarding Defendants' invalidity contentions before the exchange of claim terms on August 19. Plaintiffs are available to meet and confer on Monday, August 15 between 11 am–2 pm PT (2 pm–5 pm ET) as well as on Tuesday, August 16 between 1 pm–3 pm PT (4 pm–6 pm ET).

Please confirm which of these times Defendants are available to meet. If these neither of these times are suitable, please provide alternate times when Defendants are available.

Thank you,

Robert K. Jain
Associate

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From: Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>

Sent: Tuesday, August 10, 2021 9:14 AM

To: Gilly, Richard P. <rgilly@archerlaw.com>; Cooney, Trevor J. <tcooney@archerlaw.com>; nfranchetti@archerlaw.com

Cc: mhalderman@atlpl.com; nfranchetti@archerlaw.com; Robert K. Jain <rjain@hopkinscarley.com>

Subject: RE: Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

Counsel,

It is not acceptable that Defendants will not “consider” the letter sent last Friday until next week, especially since we need to exchange claim terms on August 19. We asked whether Defendants will stipulate to the dismissal of their invalidity counterclaim and affirmative defense to the extent that they are based on §§ 101, 102 and 103. It is difficult to believe that the three attorneys working on this case are too busy to respond to this straight-forward question or cannot meet and confer this week. Please provide your availability for a meet and confer call, otherwise it appears that we’ll need to contact the clerk to schedule a call with the Judge to resolve this issue.

Thanks,
Jeff

From: Gilly, Richard P. <rgilly@archerlaw.com>

Sent: Tuesday, August 10, 2021 8:57 AM

To: Robert K. Jain <rjain@hopkinscarley.com>; Cooney, Trevor J. <tcooney@archerlaw.com>

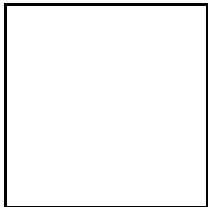
Cc: mhalderman@atlpl.com; Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>

Subject: RE: Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

Trevor and I are out of pocket this week and will consider your correspondence next week.

Richard P. Gilly, Esq.

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From: Robert K. Jain <rjain@hopkinscarley.com>

Sent: Friday, August 6, 2021 5:06 PM

To: Gilly, Richard P. <rgilly@archerlaw.com>; Cooney, Trevor J. <tcooney@archerlaw.com>

Cc: mhalderman@atllp.com; Jeffrey M. Ratinoff <jratinoff@hopkinscarley.com>

Subject: [EXT MAIL] Franklin Armory Inc. et al. v. Gallagher, et al., E.D. Pa., Case No. 2:20-cv-5681

Counsel:

Please find attached Plaintiffs' correspondence regarding Defendants' Preliminary Invalidation Contentions in the above-captioned matter.

Regards,

Robert K. Jain

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